

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Case No. 08-52810

ASHLEY L. KORN,

Chapter 7

Debtor.

Judge Thomas J. Tucker

_____ /

In re:

Case No. 08-52813

SHAUNA A. KORN,

Chapter 7

Debtor.

Judge Thomas J. Tucker

_____ /

LAWRENCE C. LENCHNER, et al.,

Plaintiffs,

v.

Adv. Pro. No. 08-5001

(consolidated with Case No. 08-5002)

ASHLEY L. KORN,

Defendant.

_____ /

**ORDER DENYING
PLAINTIFFS' MOTION FOR RECONSIDERATION**

This adversary proceeding is before the Court on "Plaintiffs' Motion for Reconsideration of Motion for Summary Judgment," filed February 21, 2009 (Docket # 27, the "Reconsideration Motion"). After reviewing the Reconsideration Motion and related papers, the Court ordered Plaintiffs to supplement their motion, which Plaintiffs did on March 13, 2009. *See* Order, filed March 6, 2009 (Docket # 34); Plaintiffs' Supplement to Motion for Reconsideration, filed March 13, 2009 (Docket # 40). After reviewing Plaintiff's supplement, the Court concluded that it should require a written response from Defendants to the Reconsideration Motion. Defendants

filed their written response, and Plaintiffs filed a reply brief. (Docket ## 43, 44)

The Court has considered all of the items filed in connection with the Reconsideration Motion, and concludes that a hearing on the motion is not necessary. The Court further concludes, for the following reasons, that the motion must be denied.

The Court finds and concludes that the Reconsideration Motion fails to demonstrate a palpable defect by which the Court and the parties have been misled, and that a different disposition of the case must result from a correction thereof. *See* Local Rule 9024-1(a)(3).

The Court further finds and concludes that even if Plaintiffs are correct in arguing that reasonable reliance is a necessary element of fraud under Michigan common law,¹ it is clear from the jury instructions now in the record that the jury in the state court case was *not* instructed that it must find reasonable reliance (or for that matter, the less demanding requirement of “justifiable reliance”) in order to find for Plaintiffs on their claims of fraud or silent fraud. Rather, only *actual* reliance was required by the jury instructions. Non-dischargeability under Bankruptcy Code § 523(a)(2)(A), on the other hand, requires not only actual reliance, but also that such actual reliance be “justifiable.” *See, e.g., Rembert v. AT&T Universal Card Services, Inc. (In re Rembert)*, 141 F.3d 277, 280-81 (6th Cir. 1998). Given the jury instructions, the issue of whether Plaintiffs’ actual reliance on Defendants’ misrepresentations or non-disclosures was justifiable (or reasonable) was not actually litigated and necessarily determined in the state court case. *See, e.g., Keever v. Gallagher (In re*

¹ As Defendants point out, in *Inland Waters Pollution Control v. Jigawon, Inc.*, 2008 WL 205209 (E.D. Mich. 2008), the United States District Court expressed the view that under Michigan law “[w]hether the reliance must be reasonable is an open question,” and that “[t]he Supreme Court of Michigan has not conclusively decided this point.”

Gallagher), 2007 WL 782183 (W.D. N.C. 2007); *KYMN, Inc. v. Langeslag (In re Langeslag)*, 366 B.R. 51, 62-63 (Bankr. D. Minn. 2007). Collateral estoppel therefore does not apply, and the Court's decision to deny Plaintiffs' motion for summary judgment was correct.

Accordingly,

IT IS ORDERED that the Reconsideration Motion (Docket # 27) is denied.

Signed on May 03, 2009

/s/ Thomas J. Tucker
Thomas J. Tucker
United States Bankruptcy Judge